



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

HENRY ERIC ROUNTON,
PLAINTIFF,

v.

CASE No. : 1:23CV224

ARMOR CORR. HEALTH
SVCS., INC., et al.,

PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANT DR. HARRIS' RULE 12(b)(6)
MOTION TO DISMISS.

THE PLAINTIFF, HENRY ERIC ROUNTON, HEREBY
SUBMITS TO THE COURT THIS BRIEF IN
OPPOSITION TO DEFENDANT DR. HARRIS'
RULE 12(b)(6) MOTION TO DISMISS. EACH
DEFENSE THE DEFENDANT ARROGATES IN
THE 12(b)(6) MOTION ON ITS FACE FAILS.

ARGUMENT:

#1 THE CONTINUING VIOLATION DOCTRINE APPLIES
TO THE CLAIMS MR ROUNTON MAKES AGAINST
DEFENDANT DR. HARRIS, AND TIMELY WITHIN
THE STATUTE OF LIMITATIONS.

IN THE PROCEDURAL BACKGROUND CLAUSE

OF THE DEFENDANT'S MOTION, DKT. 21, MENTIONS THAT MR. ROUNTON FILED AN ACTION AGAINST DR. HARRIS, AND OTHERS, IN THE WESTERN DISTRICT ENTITLED ROUTON V. ARMOR CORRECTIONAL HEALTH SERVICES, INC., et al., (CASE NO.: 1:22 CV 613), WHICH IS CORRECT. HOWEVER, THE DEFENDANT INCORRECTLY ARGUES OCTOBER 25, 2022 AS THE CONTROLLING FILING DATE, AND OUTSIDE OF THE STATUTE OF LIMITATIONS. BUT THE DEFENDANT'S ARGUMENT STRICTLY IGNORES THAT MR. ROUNTON SIGNED, AND DATED, SAID ACTION, ON 10/5/2022. MOREOVER, ATTACHED TO THE COMPLAINT, FILED IN THE WESTERN DISTRICT, SUPRA, A DECLARATION OF MR. ROUNTON STATING THAT HE HANDED IT THE AVAILABLE FLOOR OFFICER OF THE WESTERN VIRGINIA REGIONAL JAIL FOR MAILING ON OCTOBER 7, 2022, WHICH PURSUANT TO THE "MAILBOX RULE," IS THE DATE DEEMED FILED.

THE SUPREME COURT HELD THAT A PRO SE PRISONER'S NOTICE OF APPEAL IS DEEMED FILED ON THE DAY IT IS DELIVERED FOR MAILING TO PRISON AUTHORITIES, RATHER THAN APPLYING THE USUAL RULE THAT IS FILED ON THE DAY IT ARRIVES AT COURT, HOUSTON V. LACK, 487 U.S. 266, 273-76 (1988), AS THE DEFENDANT ARGUES IN

his 12(b)(6) motion. Obviously, the defendant intentionally did skirt the mailbox Rule to support his contention that the statute of limitations expired and barred Mr. Routon's claims made against him.

In the instant Complaint, Dkt. 1, Mr. Routon brings claims against the defendant under Section 1983, ADA and state law for continuing violations of his rights secured by the Eighth Amendment by denying him treatment for Hepatitis C ("HCV") with direct acting antiviral ("DAA") drugs prior to his discharge from Deerfield Correctional Center ("DCC") on October 13, 2020, the date his claims accrue. Therefore, Mr. Routon's claims against all defendants, including Dr. Harris, are not barred by the statutes of limitations.

Because Section 1983 does not provide its own statutes of limitations, the courts borrow them from the state where the violations occurred. Virginia applies a two year statute of limitations to personal injury claims. See Va. Code Section 243(A).

SINCE VIRGINIA USES A TWO YEAR STATUTE OF LIMITATIONS, ROUTON HAD UNTIL OCTOBER 13, 2022 TO FILE THIS ACTION. See NASIM V. WARDEN MD. HOUSE OF CORR., 64 F.3d 951, 955 (4th Cir. 1995). FROM THE DATE OF ROUTON'S RELEASE FROM DCC ON OCTOBER 13, 2020, UNTIL OCTOBER 7, 2022, THE DATE HE DELIVERED THE COMPLAINT IN THE INSTANT ACTION TO THE JAIL AUTHORITIES TO MAIL FOR HIM, ALONG WITH A DECLARATION TO BEAR THIS FACT, MR. ROUTON TIMELY FILED HIS CLAIMS.

THE DEFENDANT CONTENDS THAT HE "LAST SAW" MR. ROUTON ON "JANUARY 16, 2020", AND INFORMED HIM THAT HE "WAS NOT ELIGIBLE FOR DAA TREATMENT," AND "[MR. ROUTON'S] CLAIM ACCRUED AT THAT TIME...". MEMO, pg 4, ¶3. AND THAT "MR. ROUTON WAS THUS REQUIRED TO FILE HIS [SECTION] 1983 CLAIM ON OR BEFORE JANUARY 16, 2022. HOWEVER, HE DID NOT FILE HIS COMPLAINT IN THIS MATTER UNTIL FEBRUARY 15, 2023, MORE THAN TWO YEARS AFTER HIS CLAIM ACCRUED". Id. AT pg 5, ¶1. THE DEFENDANT IS INCORRECT.

AS SET FORTH ABOVE, MR. ROUTON POINTS

OUT TO THE COURT THAT THE DEFENDANT'S CONTENTIONS MANIFESTS WITH HIS INTENTIONS TO CONFUSE THE FACTFINDER BY DELIBERATELY MIXING TRUTH AND FALSEHOOD; BLOWING HOT AND COLD, DULCARDLY, IN THE PURSUANCE TO BAR MR. ROLTON'S CLAIMS, INARTISTICALLY.

IN A PROCEDURALLY SIMILAR CASE TO THE CURRENT MATTER, THE FIFTH CIRCUIT HELD THAT A SECTION 1983 ACTION BROUGHT BY A FORMER MENTAL PATIENT FOR CONTINUOUS CIVIL CONFINEMENT WITHOUT TREATMENT DID NOT ACCRUE UNTIL THE PATIENT WAS RELEASED, DONALDSON V. O'CONNOR, 493 F.2d 507, 529 (5th Cir. 1974) (VACATED ON OTHER GROUNDS BY O'CONNOR V. DONALDSON, 422 U.S. 563 (1975)). THOUGH NOT SPOT ON, THE SIMILARITIES SPEAK THAT THE DEFENDANT, DR. HARRIS, DID NOT TREAT MR. ROLTON WITH DAA DRUGS FOR THE ENTIRE PERIOD HE WAS UNDER DR. HARRIS' CARE UNTIL HIS RELEASE; FROM JULY 2019 TO OCTOBER 13, 2020. SEE DKT. 18, P's 8; 18. THE ISSUES IN THIS MATTER ARE CERTAINLY NOT BASED ON A SINGLE DISCREET VIOLATION OF MR. ROLTON'S RIGHTS ON JANUARY 16, 2020, BY DR. HARRIS,

but based on continuing violations of Mr. Routon's rights, by defendant Dr. Harris with continuous refusals to treat Mr. Routon with DAA drugs for Hepatitis C, while under his care based strictly on a policy for non-medical reasons that included administrative conveniences and profitable desires. And falls squarely into the continuing violation doctrine. Each day DAA drugs were withheld from Mr. Routon, occasioned a new violation of his Eighth Amendment rights.

"The critical distinction in continuing violation analysis ... is whether the plaintiff complained of the present consequences of a one time violation," as contended by Dr. Harris, "which does not extend the limitations period, or the continuation of a violation," Mr. Routon's contention, "into the present," Mr. Routon's release from DEC, "which does." LOVETT V. RAY, 327 F.3d 1181, 1183 (11th Cir. 2003) (quoting KNIGHT V. COLUMBUS, GA., 19 F.3d 579, 580-81 (11th Cir. 1994)). Mr. Routon has sufficiently alleged a

CONTINUING VIOLATION OF HIS EIGHTH AMENDMENT RIGHTS, by the DEFENDANT, FOR "FAILURE TO PROVIDE NEEDED AND REQUESTED MEDICAL ATTENTION, [WHICH] CONSTITUTES A CONTINUING TORT, WHICH DOES NOT ACCRUE UNTIL THE DATE MEDICAL ATTENTION IS PROVIDED," LAVEILLE V. LIST, 611 F.2d 1129, 1132 (5th Cir. 1980), OR UNTIL MR. ROUNTON WAS RELEASED FROM DCC ON OCTOBER 13, 2020. DONALDSON, 493 F.2d AT 529; SEE ALSO BURKEY V. MARBERRY, 556 F.3d 142, 147 (3rd Cir. 2009)

THE WESTERN DISTRICT HELD "TO STATE A COGNIZABLE EIGHTH AMENDMENT CLAIM FOR DENIAL OF MEDICAL CARE, [ROUNTON] MUST ALLEGE FACTS SUFFICIENT TO DEMONSTRATE THAT [THE DEFENDANT WAS] DELIBERATELY INDIFFERENT TO [ROUNTON'S] SERIOUS MEDICAL NEED," ARNETTE V. ARMOR, 7:12CV519 (W.D. Va. Sep 24 2013) (QUOTING ESTEILE V. GAMBLE, 429 U.S. 97, 105 (1976)), OF HCV. AND DEFENDANT DR. HARRIS WAS, INDEED, "DELIBERATELY INDIFFERENT" TO MR. ROUNTON'S SERIOUS MEDICAL NEED FOR TREATMENT WITH DAA DRUGS FOR HCV, AND AS A PRACTICING PHYSICIAN, DR. HARRIS CERTAINLY "KNETWLEDGE OF AND DISREGARDED AN EXCESSIVE RISK TO INMATE [ROUNTON'S] HEALTH..." FARMER V. BRENNAN,

511 U.S. 825, 837 (1994), by withholding DAA drug treatment from Mr. Routon for other than medical reasons. Mr. Routon properly asserts that HCV is a very "SERIOUS MEDICAL NEED" AND "ONE THAT HAS BEEN DIAGNOSED BY A PHYSICIAN AS MANDATING TREATMENT" 1KO V. SHREVE, 535 F.3d 225, 241 (4th Cir. 2008), AND "SO OBVIOUS THAT EVEN A LAY PERSON WOULD EASILY RECOGNIZE THE NECESSITY FOR A DOCTOR'S ATTENTION," Id. AT 241, TO CURE ROUTON'S HCV WITH DAA DRUGS. HOWEVER, THE DEFENDANT'S CARLOUS REFUSALS, FOR PROFITEERING, WITHOUT ANY REGARD TO ROUTON'S HEALTH, AMOUNTS TO MONEY FUELED GREED, AND HEDONISM; NOT AN INADVERTENT FAILURE TO PROVIDE ADEQUATE MEDICAL CARE.

FURTHERMORE, THE CONTINUING VIOLATION DOCTRINE IS AN "EXCEPTION TO THE NORMAL KNEW-OR-SHOULD-HAVE-KNOWN ACCRUAL DATE." HARRIS V. CITY OF NEW YORK, 186 F.3d 243, 248 (2d Cir. 1999), AS MR. ROUTON ALLEGES IN HIS COMPLAINT, DKT. 1, HE BRINGS HIS SECTION 1983 CLAIMS, INTER ALIA, CHALLENGING A DISCRIMINATORY POLICY, "THE COMMENCEMENT OF THE STATUTE OF LIMITATIONS PERIOD MAY BE DELAYED UNTIL THE LAST DISCRIMINATORY ACT IN FURTHERANCE OF IT." See Nat'l R.R.

PASSENGER CORP. V. MORGAN, 536 U.S. 101, 116-117 (2002). IN HIS COMPLAINT, DKT. 1, ROUTON ALLEGES SUFFICIENT FACTS OF "both the EXISTENCE OF AN ONGOING policy of DISCRIMINATION AND SOME NON-TIME BARRED ACTS TAKEN IN FURTHERANCE OF that policy" by the DEFENDANT. HARRIS, 186 F.3d AT 250.

THE SEVENTH CIRCUIT, IN HEARD V SHEAHAN, CONSIDERED WHETHER THE CONTINUING VIOLATION DOCTRINE APPLIED TO A PRISONER'S EIGHTH AMENDMENT CLAIM THAT PRISON OFFICIALS DELAYED GIVING HIM MEDICAL ATTENTION DESPITE HIS HERNIA AND DISREGARDED THE RECOMMENDATION OF DOCTORS THAT HE UNDERGO SURGERY. 253 F.3d 316, 317-20 (7th Cir. 2001). THE SEVENTH CIRCUIT HELD THAT THE CONTINUING VIOLATION APPLIED BECAUSE THE PRISONER'S CLAIM RELATED TO A "CONTINUOUS SERIES OF EVENTS GIVING RISE TO A CUMULATIVE INJURY" Id. AT 320. THIS CONCLUSION IS CONSISTENT WITH MORGAN'S APPLICATION OF THE CONTINUING VIOLATION DOCTRINE TO A SERIES OF PREDICATE ACTS FORMING THE BASIS FOR A SINGLE CLAIM. SEE MORGAN, 538 U.S. AT 117-18; THE COURT SHOULD HOLD ROUTON'S CLAIMS AGAINST DR. HARRIS AS CONSISTENT WITH MORGAN'S

APPLICATION OF THE CONTINUING VIOLATION doctrine IN THAT REFUSING TO TREAT ROUTON WITH DAA drugs FOR HCV ACCUMULATED WITH A SERIES OF PREDICATE ACTS UNTIL HIS RELEASE FROM DCC ON OCTOBER 13, 2020. Id. AT 117-118.

ROUTON SUFFERED A CONTINUING DOWNCLINE OF HIS HEALTH FROM HCV BECAUSE THE DEFENDANT FAILED TO TREAT HIM WITH DAA drugs, UP UNTIL AND AFTER HIS RELEASE FROM DCC. AS SET OUT ABOVE, MR. ROUTON'S CONSTITUTIONAL CLAIMS ARE WITHIN THE APPLICABLE STATUTES OF LIMITATIONS. COURTS HAVE HELD THAT A SERIES OF DISCRETE ACTS THAT STEM FROM AN EVENT EARLIER THAN THE LIMITATIONS PERIOD IS A CONTINUING VIOLATION, SO THE WHOLE SERIES IS NOT TIME-BARRIED BASED ON THE DATE OF THE INITIAL EVENT OF DR HARRIS' DENIAL TO TREAT MR. ROUTON WITH DAA drugs FOR THE SERIOUS MEDICAL NEED OF HCV, WHICH WAS A CONTINUOUS VIOLATION OF ROUTON'S EIGHTH AMENDMENT RIGHTS UP UNTIL THE DATE OF HIS RELEASE FROM DCC. See e.g., Wells v. U.S., 420 F.3d 1343, 1346-47 (Fed. Cir. 2005)

#2 THE PLAINTIFF'S ADA CLAIM FAILS UNDER 28 U.S.C. 1658 FOUR-YEAR CATCH ALL STATUTE OF LIMITATIONS AND NOT TIME-BARRIED

THE ADA DOES NOT HAVE A STATUTE OF LIMITATIONS. See THORNE V. HALE, NO. 1:08CV601 (JCC), 2009 U.S. Dist. LEXIS 25938 (E.D. Va. Mar. 26, 2009). HOWEVER, CONGRESS BROADENED THE MEANING OF THE TERMS IN THE ADA AMENDMENTS ACT OF 2008, EFFECTIVE JANUARY 1, 2009, TO OVER-RULE RESTRICTIVE INTERPRETATIONS OF THE TERMS USED BY THE SUPREME COURT.

THE ADA AMENDMENTS ACT STATED GENERALLY: "THE DEFINITION OF DISABILITY IN THIS CHAPTER SHALL BE CONSTRUED IN FAVOR OF BROAD COVERAGE OF INDIVIDUALS UNDER THIS CHAPTER, TO THE MAXIMUM EXTENT PERMITTED BY THE TERMS OF THIS CHAPTER." 42 U.S.C. 12102(4)(A). SPECIFICALLY, IT REDEFINED "SUBSTANTIALLY LIMITS" AS FOLLOWS:

(B) THE TERM "SUBSTANTIALLY LIMITS" SHALL BE INTERPRETED CONSISTENTLY WITH THE FINDINGS AND PURPOSES OF THE ADA AMENDMENTS ACT OF 2008

(C) AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE MAJOR LIFE ACTIVITY NEED NOT LIMIT OTHER MAJOR LIFE ACTIVITIES IN ORDER TO BE CONSIDERED A DISABILITY.

THE ADA AMENDMENTS ACT ALSO REDEFINED

MAJOR LIFE ACTIVITIES AS FOLLOWS:

(A) IN GENERAL

FOR PURPOSES OF PARAGRAPH (1), MAJOR LIFE ACTIVITIES INCLUDE, BUT ARE NOT LIMITED TO, CARING FOR ONESELF, PERFORMING MANUAL TASKS, SEEING, HEARING, EATING, SLEEPING, WALKING, STANDING, LIFTING, BENDING, SPEAKING, BREATHING, LEARNING, READING, CONCENTRATING, THINKING, COMMUNICATING AND WORKING.

(B) MAJOR BODILY FUNCTIONS

FOR THE PURPOSES OF PARAGRAPH (1), A MAJOR LIFE ACTIVITY ALSO INCLUDES THE OPERATION OF A MAJOR BODILY FUNCTION, INCLUDING BUT NOT LIMITED TO, FUNCTIONS OF THE IMMUNE SYSTEM, NORMAL CELL GROWTH, DIGESTIVE, BOWEL, BLADDER, NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE, AND REPRODUCTIVE FUNCTIONS.

42 U.S.C. 12102(2).

BEFORE THE ADA AMENDMENTS ACT, COURTS HAD TO DETERMINE CASE BY WHAT ARE MAJOR LIFE ACTIVITIES UNDER THE STATUTE; NOW, THE STATUTE INCLUDES MOST OF THE ACTIVITIES PREVIOUSLY RECOGNIZED IN CASE LAW, BUT STILL ALLOWS FOR THE CASE-BY-CASE IDENTIFICATION OF OTHER MAJOR LIFE ACTIVITIES BY SAYING "INCLUDING BUT NOT LIMITED TO"

the items listed. THE AMENDMENTS OVER-
 RULE SOME EARLIER DECISIONS FINDING AN IM-
 PAIRMENT DID NOT AFFECT A MAJOR LIFE
 ACTIVITY. FOR EXAMPLE, ONE APPEALS COURT
 HELD THAT LIVER FUNCTION IS NOT A
 MAJOR LIFE ACTIVITY, FURNISH V. SVI SYSTEMS,
INC., 270 F.3d 445, 449-50 (7th Cir
2001), PRIOR TO THE ADA AMENDMENTS ACT.
 HOWEVER, THE AMENDMENTS SPECIFICALLY IN-
 CLUDE "MAJOR BODILY FUNCTIONS" AS MAJOR
 LIFE ACTIVITIES, AND LIVER FUNCTION IS
 "MAJOR" ENOUGH THAT YOU CAN'T SURVIVE WITHOUT
 IT. MR. ROUTON'S HCV IS SEVERELY DAMAGING
 HIS LIVER. THE AMENDED STATUTE ALSO MEN-
 TIONS DIGESTIVE AND CIRCULATORY FUNCTIONS,
 TO WHICH MR. ROUTON'S LIVER CONTRIBUTES

MR. ROUTON AVERS THAT PRIOR TO THE ADA
 AMENDMENTS ACT HEPATITIS C, WHICH AFFECTS
 HIS LIVER FUNCTION, WAS NOT CONSIDERED AS
 A DISABILITY AND WAS TIME LIMITED TO
 THE STATES MOST ANALOGOUS STATUTE OF
 LIMITATIONS. HOWEVER, SINCE THE ADA
 AMENDMENTS ACT WAS ENACTED AFTER
 DECEMBER 1, 1990, THE STATUTES OF LIMITA-
 TIONS ARE GOVERNED BY THE UNIFORM
 STATUTE OF LIMITATIONS ON FEDERAL CLAIMS,
 WHICH PROVIDES A FOUR-YEAR STATUTE OF
 LIMITATION.

BECAUSE TITLE II OF THE ADA DOES NOT

CONTAIN A STATUTE OF LIMITATIONS, COURTS MUST EITHER APPLY THE FEDERAL FOUR-YEAR CATCH-ALL LIMITATIONS PERIOD OR THE STATE STATUTE OF LIMITATIONS FOR THE MOST ANALOGOUS STATE LAW CLAIM. A Soc'y WITHOUT A NAME, FOR PEOPLE WITHOUT A HOME, MILLENNIUM FUTURE - Present v. Virginia, 655 F.3d 342, 347 (4th Cir. 2011). THE FOUR-YEAR FEDERAL CATCH-ALL PERIOD APPLIES ONLY TO CLAIMS ARISING UNDER STATUTES ENACTED AFTER DECEMBER 1, 1990, AND THE ADA WAS ENACTED A FEW MONTHS BEFORE THAT, ON JULY 26, 1990. Id. THEREFORE AS A GENERAL RULE, "THE ONE-YEAR LIMITATIONS PERIOD IN THE VIRGINIA RIGHTS OF PERSONS WITH DISABILITIES ACT APPLIES TO ADA CLAIMS BROUGHT IN VIRGINIA." Id. AT 348. THE ADA WAS AMENDED, HOWEVER, IN 2008. ADA AMENDMENTS ACT OF 2008, Pub. L. No. 110-325, 122 Stat. 3553 (CODIFIED AT 42 U.S.C. 12102). BECAUSE ROLTON'S CLAIM WAS MADE POSSIBLE BY THE ADA AMENDMENTS ACT RATHER THAN THE PRE-AMENDMENT ADA, HE INVOKES THE FOUR-YEAR STATUTE OF LIMITATIONS, See Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 382 (2004); MERCADO V. Puerto Rico, 814 F.3d 581, 589 (1st Cir. 2016), BECAUSE HIS CONDITION OF HCV WAS NOT RECOGNIZED. HOWEVER, THE AMENDMENTS SPECIFICALLY INCLUDE "MAJOR BODILY FUNCTIONS" AS MAJOR LIFE ACTIVITIES, AND LIVER FUNCTION IS "MAJOR" ENOUGH THAT YOU CAN'T SURVIVE. SUPRA.

without it. Again, Plaintiff asserts that his ADA claim could not have been maintained under the ADA as originally enacted, and instead is only now permitted owing to the broader definition of qualifying disabilities set forth in the 2008 Americans with Disabilities Act Amendments Act (ADAAA). In Jones v. RR. Donnelley & Sons Co., the Supreme Court held that a Plaintiff's claim is governed by Section 1658(a) "if the Plaintiff's claim against the Defendant was made possible by a post-1990 enactment" 541 U.S. 369, 382 (2004) (emphasis added). In that regard, Plaintiff contends that his claim of, inter alia, not including him in the pharmacy program at DEC by withholding accommodating DAA drugs for HCV is a discriminatory act of non-actions based on Mr. Routon's now "qualifying disability" of HCV, made possible by the 2008 ADAAA, supra, and he now invokes the four-year statute of limitation contained in 28 U.S.C. Section 1658(a). Therefore, his ADA claim is not time barred. See MALPICA v. KINCAID, No. 1:21-cv-417 (E.D. Va. Feb. 18, 2022).

As an inmate, the Federal ADA apply to Mr. Routon, Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S. 206 (1998),

BECAUSE "Rights Against Discrimination ARE AMONG THE FEW RIGHTS THAT PRISONERS DO NOT PARK AT THE PRISON GATES" AND HE "HAS THE SAME INTERESTS IN ACCESS TO THE PROGRAMS, PHARMACY, SERVICES, AND ACTIVITIES AVAILABLE TO THE OTHER INMATES OF [DCC] AS DISABLED PEOPLE ON THE OUTSIDE HAVE TO THE COUNTERPART PROGRAMS, PHARMACY, SERVICES, AND ACTIVITIES AVAILABLE TO FREE PEOPLE." See CRAWFORD v. INDIANA DEPT. OF CORRECTIONS, 115 F.3d 481, 486 (7th Cir. 1997). ESPECIALLY, MR. ROUTON'S RIGHT TO BE CURED OF HIS SERIOUS MEDICAL CONDITION OF HCV, WHICH MAY EVENTUALLY LEAD TO HIS DEATH.

#3 PLAINTIFF'S STATE CLAIM FOR BREACH OF CONTRACT AGAINST THE DEFENDANTS IS NOT BARRED

MR. ROUTON, AT ALL TIMES RELEVANT A THIRD PARTY BENEFICIARY OF THE CONTRACT BETWEEN VDOC AND DEFENDANTS FOR THE PROVISION OF QUALITY MEDICAL CARE.

THE THIRD PARTY BENEFICIARY RULE IS AN EXCEPTION TO THE GENERAL RULE THAT A PERSON MUST BE A PARTY TO A CONTRACT TO INVOKE IT. Ida Code Sec. 55.1-119. MR. ROUTON IS A THIRD PARTY BENEFICIARY BECAUSE THE CONTRACT BETWEEN DEFENDANTS VDOC AND

ARMOR INTENDED TO CONFER BENEFIT OF QUALITY MEDICAL CARE UPON HIM. See e.g. PROFESSIONAL REALTY CORP. V. BENDER, 216 Va. 373, 739 (1976). THEREFORE, MR. ROUTON IS VESTED WITH THE RIGHT, AND WITH THE ABILITY TO SUE UNDER THE CONTRACT.

MR. ROUTON DOES NOT BRING THIS CLAIM IN TORT, BUT INSTEAD, IN CONTRACT, BECAUSE THE DEFENDANTS, DR. HARRIS AND ARMOR, THROUGH THE CONTRACT WITH VIDOC, ASSUMED AN OBLIGATION FOR THE BENEFIT OF MR. ROUTON FOR THE PROVISION OF QUALITY MEDICAL CARE, AND NOT SHODDY IMITATION OF QUALITY THAT DR. HARRIS AND ARMOR PASSED OFF AS GENUINE. A SHAM. See e.g. FULLER V. WARDEN, CIVIL ACTION NO. WMN-12-43 (D. MD. MAR 08, 2012)

THE STATUTE OF LIMITATIONS FOR A BREACH OF A WRITTEN CONTRACT CLAIM IN VIRGINIA IS FIVE YEARS. Va. Code SEC. 8.01-246(2). AT THE LATEST, THE COMPLAINT (Dkt. 1) ALLEGES THE DEFENDANT CONTINUOUSLY VIOLATED/BROKE THE WRITTEN CONTRACT TO WHICH MR. ROUTON WAS THIRD PARTY BENEFICIARY TO UP UNTIL HIS RELEASE FROM DCC CUSTODY ON OCTOBER 12, 2020. MR. ROUTON HAD UNTIL OCTOBER 12, 2025 TO FILE HIS BREACH OF CONTRACT CLAIM. THEREFORE, THIS CLAIM HAS BEEN FILED TIMELY. MANDATAS V. OCWEN LOAN SERVICING, LLC, NO. 18-2026 (4th

Cir. Dec 09, 2019).

#4 PLAINTIFF'S CONSTITUTIONAL CLAIMS NOT BARRED BECAUSE DR. HARRIS IS NOT ENTITLED TO QUALIFIED IMMUNITY

THE DOCTRINE OF QUALIFIED IMMUNITY, A FEDERAL COMMON LAW PRECEPT APPLICABLE IN SECTION 1983 CASES, SHIELDS OFFICIAL DEFENDANTS FROM MONETARY LIABILITY SO LONG AS THE OFFICIAL'S CONDUCT DID NOT VIOLATE "CLEARLY ESTABLISHED" STATUTORY OR CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE PERSON IN THE DEFENDANT'S POSITION WOULD HAVE KNOWN. MITCHELL V. FORSYTH, 427 U.S. 511, 526 (1985); HARLOW V. FITZGERALD, 457 U.S. 800, 818 (1982); WEILER V. DEPT OF SOC. SERVS. FOR CITY OF BALT., 901 F.2d 387, 388 (4th Cir. 1990).

DR. HARRIS ASSERTS THE AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY INGENUOUSLY, WITH INTENTION TO MISSTATE "PLAINTIFF CANNOT ESTABLISH THAT DR. HARRIS HAD KNOWLEDGE OF A RISK OF HARM, OR THAT A REASONABLE PHYSICIAN IN DR. HARRIS'S POSITION WOULD HAVE KNOWN THAT HE WAS VIOLATING PLAINTIFF'S CONSTITUTIONAL RIGHTS BY ADHERING TO THE GUIDELINES." (Dkt. 21, pg 11, ¶ 2). THIS CONTENTION, HOWEVER, IS WITHOUT MERIT. THE THRUST OF MR. REUTEN'S

CLAIMS IS THAT DR. HARRIS, WHO SUBJECTIVELY REALIZED THAT HIS PATIENT, MR. ROUNTON, WAS SUFFERING FROM A SERIOUS MEDICAL CONDITION, DID VIRTUALLY NOTHING IN RESPONSE. AND THE DECISINAL LAW IS QUITE CLEAR THAT PRISON DOCTORS, SUCH AS DEFENDANT DR. HARRIS, HAVE A CONSTITUTIONAL OBLIGATION TO PROVIDE MEDICAL TREATMENT TO INMATES IN THEIR CARE, ESTELLE, 429 AT 104; SEE ALSO JOHNSON V. WILLIAMS, 786 F. Supp. 1161, 1165 (E.D. Va. 1991) (CITING NUMEROUS DECISIONS OF THE SUPREME COURT OF THE UNITED STATES AND OF THE FOURTH CIRCUIT, STATING: "IT IS WELL SETTLED THAT DELIBERATE INDIFFERENCE TO A PRISONER'S SERIOUS MEDICAL NEEDS CONSTITUTES A VIOLATION OF THE EIGHTH AMENDMENT). FOR THIS REASON, DR. HARRIS'S QUALIFIED IMMUNITY DEFENSE FAILS. REGARDING DR. HARRIS' MISHMASH AVERMENT IN REGARDS TO 'GUIDELINES', SUPRA, AS AN INDEPENDENT CONTRACTOR, UNDER VIRGINIA LAW, IS THE UNDISPUTED FACT THAT DR. HARRIS HAD SOLE CONTROL OVER THE COURSE OF TREATMENT ORDERED, OR NOT ORDERED FOR MR. ROUNTON. IN OTHER WORDS ARMOR'S CONTRACT WITH VDOC IN NO WAY IMPINGED ON THE DISCRETION TYPICALLY ENJOYED BY PHYSICIANS, SUCH AS DR. HARRIS, RESPECTING TREATMENT OF THEIR PATIENTS. CF LEE V. BOURGEDIS, 252 VA. 328, 477 S.E.2D 495, 497 (1996) (A PHYSICIAN'S EXERCISE OF PROFESSIONAL SKILL AND

Judgement in treating a patient is not subject to the control of the Commonwealth). Thus, as to the most critical portion of his work for VDOC - treating patients - Dr. Harris enjoyed complete control, Beckon v. Mitchell, 327 F. Supp. 2d 615, 661-62 (E.D. Va. 2004)

Next, Reuten contends that Dr. Harris is not eligible for qualified immunity pursuant to Richardson v. McKnight, 521 U.S. 399 (1997).

In Richardson, the Supreme Court held that prison guards employed by a large for-profit multistate private management company that had a contract with the state to manage the prison were not entitled to qualified immunity in a prisoner's Section 1983 action against them. In deciding not to extend qualified immunity to the privately-employed guards, the Supreme Court looked at the history and purposes of qualified immunity. It first concluded that while prisons had historically been run by both public and private state actors, no firmly rooted tradition of immunity for private prison guards had developed around the time Section

1983 WAS ADOPTED IN THE LATE NINETEENTH CENTURY. IT NEXT LOOKED AT THE PURPOSES BEHIND QUALIFIED IMMUNITY, WHICH IT NOTED WERE (1) PROTECTING AGAINST UNWARRANTED TIMIDITY ON THE PART OF GOVERNMENT OFFICIALS, (2) ENSURING THAT TALENTED CANDIDATES ARE NOT DETERRED FROM ENTERING PUBLIC SERVICE, AND (3) PREVENTING THE DISTRACTION OF GOVERNMENTAL OFFICIALS BY LANSUITS. IT CONCLUDED THAT NONE OF THESE PURPOSES MANDATED QUALIFIED IMMUNITY FOR THE GUARDS BECAUSE THE PROBLEM OF UNWARRANTED TIMIDITY WOULD BE OVERCOME BY ORDINARY MARKET FORCES AS PRIVATE FIRMS VIED TO PROVIDE THE CONTRACTUAL SERVICES, BECAUSE THE FLEXIBILITY OF PRIVATIZATION COULD PROVIDE HIGHER PAY AND BENEFITS AND INSURANCE AND INDEMNIFICATION TO REDUCE THE DETERRENCE FACTOR, AND BECAUSE THE DISTRACTION OF LITIGATION WAS ALONE INSUFFICIENT TO JUSTIFY QUALIFIED IMMUNITY. 521 U.S. AT 409-21.

FURTHERMORE, IN RELIANCE ON RICHARDSON, THE NINTH CIRCUIT, IN JENSEN V. LAINE COUNTY, 222 F.3d 570 (9th Cir 2000), SUBSEQUENTLY HELD THAT A PSYCHIATRIST, WHO WAS AFFILIATED WITH A PRIVATE PSYCHIATRIC GROUP

that contracted with a county facility to provide mental health care, was not entitled to qualified immunity in a 1983 action by a prisoner whose detention was temporarily extended by the psychiatrist for a mental health evaluation. The Ninth Circuit, noting the case was similar enough to Richardson to warrant using its rationale, concluded there was no definitive common law history of immunity that would support a finding of qualified immunity under the circumstances of the case, and that the same market forces and deterrence factors because the private psychiatrist group that employed the defendant "must provide psychiatric services for the [State] with the market threat of replacement for failure to complete [its] duties adequately" and because "the potential for insurance, indemnification agreements, and higher pay all may operate to encourage qualified candidates to engage in this endeavor and to discharge their duties vigorously" 222 F.3d 570, 578 (9th Cir 2000)

IN MANY RESPECTS, THE INSTANT CASE

TECHNICALLY IS VERY SIMILAR TO RICHARDSON TO WARRANT USING ITS RATIONALE. DEFENDANT DR. HARRIS IS NOT ENTITLED TO QUALIFIED IMMUNITY.

#5 MR. ROUNTON IS NOT REQUIRED TO OBTAIN AN EXPERT OPINION TO FILE A MEDICAL MALPRACTICE CLAIM.

SHORTLY, MR. ROUNTON POINTS OUT THAT DR. HARRIS' CONTENTION REGARDING AN EXPERT OPINION CERTAINLY IGNORES THE FOURTH CIRCUIT'S DECISION IN PLEDGER V. LYNCH, 5F 4th 511, 514 (4th Cir. 2021), WHICH HELD THAT A SIMILAR CERTIFICATION REQUIREMENT WAS "INCONSISTENT WITH FEDERAL RULES OF CIVIL PROCEDURE, AND THUS, DISPLACED BY THOSE RULES IN FEDERAL COURT." Id. THEREFORE, A CERTIFIED EXPERTS OPINION IS NOT NEEDED.

DATE: 08/02/2023

Henry Eric Rounton

HENRY ERIC ROUNTON
5885 W. RIVER RD
SALEM, VA 24153

CERTIFICATE OF SERVICE

I HEREBY CERTIFY ON THIS 2ND DAY OF AUGUST, 2023, I MAILED A COPY OF THE FOREGOING TO TAYLOR BREWER, ESQ., MORANI REEVES & CONN PC, 1211 E. CARY ST., RICHMOND, VA 23219

Henry Eric Routon
HENRY ERIC ROUTON
5885 W. RIVER RD
SALEM, VA 24153

I, HENRY ERIC ROUTON, HEREBY DECLARE UNDER PENALTY OF PERJURY PURSUANT TO 28 U.S.C. 1746 I ON THIS 2ND DAY OF AUGUST, 2023 HANDED THIS ITEM TO THE FLOOR OFFICER FOR MAILING TO THE U.S. DISTRICT COURT IN ALEXANDRIA, VIRGINIA.

Henry Eric Routon
5885 W. RIVER RD
SALEM, VA 24153